

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHANNON WILLIAMS,

Plaintiff,

vs.

RAYNOR RENSCH & PFIEFFER, *et*
al.,

Defendants.

8:11-CV-446

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. The plaintiff filed a Notice of Appeal (filing [256](#)) on July 20, 2015. However, the plaintiff failed to include the \$505.00 filing and docket fees. So, the Court ordered the plaintiff to either pay the \$505.00 filing and docket fees to the Clerk of the Court or submit a request to proceed in forma pauperis, and set a deadline of August 27, 2015. Filing [259](#).

That deadline has passed, and the plaintiff has not responded. But the Court has also considered whether [Fed. R. App. P. 24\(a\)\(3\)](#) permits the plaintiff to proceed in forma pauperis on appeal without further authorization. That rule provides, as relevant, that "[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization" *Id.* But after a careful examination of the record, the Court finds that the plaintiff was never permitted to proceed in forma pauperis in district court.

This case was removed from state court, so the initial filing fee was paid by the removing defendant. *See* [28 U.S.C. § 1914\(a\)](#). The plaintiff did file two motions to proceed in forma pauperis with respect to service of process. *See*, filing [14](#); filing [35](#). Had those motions been granted, they might have satisfied Rule 24(a)(3). But the plaintiff's motions were *denied* by the district court. Filing [59](#). The motions were never reasserted, and nothing in the subsequent reconsideration or appeal of that order revisited their denial. *See*, filing [82](#); filing [116](#) at 1; filing [123](#); filing [124](#). The plaintiff was permitted by the Eighth Circuit to proceed *on appeal* in forma pauperis, *see* filing [123](#), but Rule 24(a)(3) requires that a party be "permitted to proceed in forma pauperis *in the district-court action*" before automatically being permitted to proceed in forma pauperis on appeal. *Id.* (emphasis supplied).

In other words, the plaintiff may not proceed in forma pauperis on appeal without further authorization. And the Court finds that the plaintiff, having filed no motion to proceed in forma pauperis, is not entitled to do so. The Clerk of the Court will be directed to process the plaintiff's appeal, and to provide the parties and the Court of Appeals with a copy of this order, as required by [Fed. R. App. P. 24\(a\)\(4\)\(C\)](#).

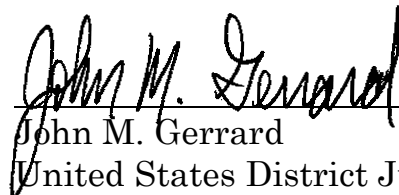
The plaintiff is informed that within 30 days of this notice, he may file a motion to proceed in forma pauperis with the Court of Appeals. See [Fed. R. App. P. 24\(a\)\(5\)](#). However, the plaintiff is advised that the filing of a Rule 24(a)(5) motion will result in the immediate assessment of appellate filing fees under [28 U.S.C. § 1915\(b\)](#). See [Henderson v. Norris](#), 129 F.3d 481, 485 (8th Cir. 1997).

IT IS ORDERED:

1. The plaintiff is not entitled to proceed in forma pauperis on appeal.
2. The Clerk of the Court shall process the plaintiff's appeal, and shall provide the parties and the Court of Appeals with a copy of this order.

Dated this 2nd day of September, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge